

FDA TALK PAPER

*Food and Drug Administration
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T97-40
August 27, 1997

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TOBACCO REGULATION UPDATE

FDA has been receiving inquiries recently about its regulation of tobacco and the previously announced effective date of August 28 for provisions covering vending machines, self-service displays and advertising. Because of a lawsuit brought by the tobacco, advertising and convenience store industries against FDA, the effective date of "access" provisions has been delayed, and the following can be used to answer questions:

In April, the Federal District Court in Greensboro, N.C., ruled that FDA had jurisdiction under the Federal Food, Drug and Cosmetic Act to regulate nicotine-containing cigarettes and smokeless tobacco products.

The court upheld all restrictions involving youth access and labeling but delayed implementation of some of these provisions, pending further order of the court. In addition, the court found that FDA did not have authority under the statutory provision that FDA relied on to regulate the advertising and promotion of cigarettes and smokeless tobacco.

Both parties have appealed the district court decision. Arguments before a three-judge panel of the Fourth Circuit Court of Appeals were heard on August 11.

What this means to retailers is:

- * The provisions that went into effect on February 28 remain in effect. Retailers must not sell cigarettes or smokeless tobacco to persons under age 18, and retailers must verify the age of customers under age 27 by requesting a photographic identification containing the bearer's birth date.
- * The "access" restrictions scheduled to take effect on August 28, including prohibitions against vending machines and self-service displays, are delayed pending further order of the court. Therefore, retailers are not required to remove vending machines or self-service displays at this time.
- * The advertising restrictions, including a prohibition against the use of color or imagery in store advertising, were overturned by the district court and are currently on appeal. Retailers do not have to remove in-store advertising at this time.

FDA will publicize future compliance dates as soon as they are established and remains committed to working closely with the retail community.

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